

HOW DO I USE THE SMALL CLAIMS COURT?

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1. What kinds of disputes can I take to small claims court?

You can use the small claims court if you have a dispute with a person, company or government agency involving \$5,000 or less.

You might want to take a dispute to small claims court, which is called “making or filing a claim,” if, for example:

¥ Someone dents your fender and refuses to pay for repairs.

¥ Your new sofa comes apart at the seams, and the store will not fix it or give back your money.

¥ The dry cleaner ruins your favorite shirt and will not pay you anything.

¥ The landlord will not return your security deposit, even though you left the apartment in good condition.

¥ You loaned money to someone who will not pay it back.

2. What can I do if I am owed more than the small claims limit?

You may want to hire a lawyer and sue in a higher court. Or, you may cut your claim to fit the \$5,000 limit.

For example, if a person owes you \$5,400, you can give up \$400 in order to bring your claim down to the \$5,000 limit. However, you can't sue the person twice—once for \$5,000 and then for \$400.

Also, keep in mind that between January 1 and December 31 of any year, you cannot file more than two claims for more than \$2,500 each.

When you take a dispute to small claims court, you may be entitled to receive “costs” from the other person. These are such charges as filing fees, the costs of notifying the person you are suing, and witness fees. Ask the court to add these costs to the “judgment,” which is the amount of money that the court says the other person owes you.

3. Should we settle out of court?

You must decide whether the small claims court is the best answer to your problem. You will have to spend some time getting ready for a court hearing. You also may have to take time off work to visit the small claims court clerk's office and to attend the hearing.

Even if you win, the person you sued may not have the money to pay you. Then, you will need to spend more time and money trying to collect. If you do not have time to collect the money yourself, you may have to hire a collection agency. The agency may charge a fee of up to 50 percent of the money it collects.

Instead of going to court, you can consider:

¥ Dealing directly with the other party. Both of you may end up saving time and money if you can agree on a way to settle the dispute. Let's say that you are the person being sued. If someone says you owe \$300, you might say, “I think you are wrong about that, but I would be willing to pay you \$150 so that we can both forget it.” If you do this, be sure to have a written agreement and keep a signed copy in a safe place. Also, check with the clerk of the small claims court to be sure that the lawsuit is dismissed.

¥ Arbitration. If your dispute involves a contract, check to see if the contract includes the right to arbitrate in case of a disagreement. This means you can submit the contract dispute to an independent, impartial panel that will hear both sides and recommend a solution. If you file a suit in small claims court, you may give up the right to arbitrate the dispute later.

¥ Mediation. This means that a neutral third party—a person who is not involved in the dispute—tries to help you and the other party come to an agreement. Mediation is voluntary, and mediators do not give their opinions. Instead, they help people exchange information and ideas, and talk about ways to settle their differences. Check with the small claims court clerk to see if there is a mediation center in your area.

4. How does the small claims court work?

In most instances, lawyers are not allowed in small claims court, so you must represent yourself. However, you can talk to a lawyer beforehand (see #13). This is true whether you are the *plaintiff*—the person who is suing—or the *defendant*—the person being sued.

Small claims courts are informal. They do not have complicated ways of doing things. No one is allowed to make objections. And there are no juries.

Cases move quickly. Usually, a hearing is scheduled within 40 days. However, if one of the people involved lives outside of the county, it might take up to 70 days.

You do not have to be a United States citizen to use the small claims court. You do have to be at least 18 years old and mentally competent. If you are not, the court must appoint a guardian—parent, relative or adult friend—to sue for you.

When you file your claim, the court clerk generally will set the hearing date. In larger communities, small claims court is held some evenings or on Saturday once a month.

Many counties have a small claims advisor who can answer your questions and explain the process. An advisor also may be able to help you find a mediation service (see #3). Usually the information on contacting the small claims advisor is included in instructions available from the court.

5. How do I file my claim?

Before you file a claim, you must demand payment from the other person, and that person must refuse to pay or ignore your demand. It is a good idea to make the demand in writing and keep a copy.

Most personal injury claims must be filed within one year. But claims dealing with property damage, written contracts and many other problems can be filed even after a year has passed. Also, time limits and procedures are different if you want to sue a federal agency. So, be sure to ask the small claims advisor for information.

Here are three basic steps in filing a claim:

Step 1: Fill out and sign a Claim of Plaintiff form. You will need the following information:

¥ The right place. You need to file your claim in the proper courthouse. Depending on the reason you are suing, this can be where the dispute took place, where the person you are suing lives, where the firm you are suing does business, where the contract you made was supposed to be fulfilled or where the accident that led to your dispute took place. Check with the small claims advisor, whom you can contact through your county small claims court, to be sure you file in the right place.

¥ The defendant's proper name. This is very important. If you do not correctly state the name of the person or company in your claim, the case may be dismissed. Then, you may have to start over. An incorrect name also may cause problems when you try to collect money from the defendant.

If you sue individuals, you will need each person's full name and address. For a business, you will need the names of the company and the owners. When a corporation is involved, be sure to get its full name and address. You also need the name and address of an officer or some other person that legally can be notified of a lawsuit. You can get this information about corporations that do business in California by visiting the Secretary of State's Web site at www.ss.ca.gov. (Click on "California Business Portal," then "California Business Search.") Or, you can request such information by writing to: Secretary of State, "Statement of Information," 1500 11th Street, Sacramento, CA 95814. There may be a small fee; call 916-657-5448 for more information.

If the case involves a car accident, it is very important to get the full names and addresses of the registered owner and the driver—if they are not the same person. You also can ask for the name of the car's legal owner.

¥ The facts of the dispute. You must know exactly how much money you are claiming, the reason why you are claiming the money, and the date and place that the dispute got started.

Step 2: Pay the filing fee. If you cannot afford this fee or any other costs involved, you may not have to pay. Ask the clerk for a fee waiver form.

Step 3: Notify the defendant. You must arrange to have a copy of the Claim of Plaintiff served or delivered to each defendant you are suing. The law says that any person who is 18 or older and who is not involved in the case can deliver the notice.

There are four ways in which you can notify the defendant. You can arrange to have someone from the sheriff's, marshal's or constable's office serve the notice. Although it costs more, you can hire a process server to make the delivery. The court clerk can send the notice for you by certified mail for a small fee for each defendant. Or, a friend over the age of 18 can act as a process server for you.

If you win the case, you may be able to get back the cost of serving the Claim of Plaintiff.

If you use a process server or a friend, be sure the person completes and signs the form saying that the notice was delivered to the defendant. This notice is called Proof of Service. The person must return the form to the small claims clerk's office. He or she also must understand that the Claim of Plaintiff must be served personally on the person being sued; it cannot be left on a doorstep or stuffed in a mailbox.

Defendants must receive the Claim of Plaintiff at least 15 days before the hearing, if they live in the county where it will be held. If they live outside the county, they must receive it at least 20 days before the hearing. Otherwise, unless a defendant chooses to show up and say, "Let's go ahead anyway," the judge must delay the hearing for at least 15 days.

In some cases, you may be able to use substituted service. This means that someone other than the defendant can receive the notice that you are suing. See your small claims advisor to find out if you can, or should, use substituted service.

6. What if I have a claim against the person who is suing me?

First, you must demand that the person pay you the exact amount that you believe you are owed. If you do not receive the money, you may file a Claim of Defendant against the plaintiff. This is a paper that says how much the other person owes you and why.

You can get the form from the small claims clerk. Do this well before the hearing date because, in most cases, the person suing you must receive the form at least five days before the hearing.

You must serve the Claim of Defendant in the same way that a Claim of Plaintiff is served (see #5).

7. What should I do before going to court?

Try not to be nervous. Keep in mind that the judge—or mediator, in some cases—is experienced in settling disputes and will try to come to a fair decision.

If you think you will have trouble remembering all the facts or talking to the judge, write down a list of the important points so you won't forget anything. Or, have someone write the list for you. Then, rehearse what you want to say in front of a friend, a family member or a mirror. If necessary, you can read your remarks to the judge. But do not plan to make a long statement.

You also can ask the small claims court advisor to help you prepare for the hearing. And although you cannot take a lawyer to court with you, you have every right to talk with one beforehand (see #13).

8. What should I bring to court?

Bring the original copies of all the papers that you need to prove your case. For example, bring any letter, contract, rental agreement, deed, canceled check, repair bill, IOU, written damage estimate, diagram, drawing or photograph that will help your case.

You also should bring two photocopies of every original. You may be asked to give one copy to the person you are suing and one to the court. Depending on the reason you are going to court, you might even bring the shirt that the dry cleaner ruined or the blender that does not work.

If you have any witnesses, you must bring them to court with you. The judge generally will not consider what a witness has to say unless the person says it in court. But if your witnesses cannot appear in court, bring signed statements or “declarations” just in case the judge allows them. If possible, have the statements notarized.

If a witness refuses to attend, the court can issue a *subpoena*—an official paper ordering the person to come to court. The small claims clerk can tell you how to do this. If you subpoena a witness, you must be prepared to pay the person a set fee each day plus a certain amount per mile to and from the court. Ask the judge at the hearing to add these costs to the judgment (see #2).

Make a brief statement of the facts, covering the important points. Answer the judge’s questions carefully. Do not insult or argue with the other party, even if you get angry.

Sometimes the judge announces the decision at the end of the hearing. But often the case will be “taken under submission,” which gives the judge time to review the law carefully. In this case, you will receive the judge’s decision in writing in about two weeks.

9. What happens if I do not show up for the hearing?

If you are the defendant and cannot go to court at the time of the hearing, write the small claims clerk as soon as possible. Ask if you can get the date changed. In making such a request, you will be required to pay a fee.

Otherwise, if you are properly notified about the hearing and do not show up, the judge is likely to order a default judgment against you. This means the court—after hearing evidence from the other side—has decided against you.

If you are the plaintiff and you do not show up, the judge may dismiss your case or decide in favor of the defendant.

In either case, to get a second chance to tell your side of the story, there must be a very good reason why you did not attend the hearing. If you think the judge will accept the reason, file a motion to “vacate the judgment.” You must do this within 30 days of the date that the clerk mailed you the notice of the court’s decision. In addition, you will be required to pay a fee. The clerk will give you the forms to fill out. If you do not file this motion, you will not be allowed to appeal the decision to a higher court either.

10. If I lose, can I appeal the decision?

Only defendants can appeal the decision of the small claims court. So, if you are the plaintiff, you cannot appeal—unless the defendant files a Claim of Defendant (see #6) against you, and you lose this case.

If you believe that the judge has made a “clerical error,” be sure to tell the small claims court clerk. For example, the amounts due you may have been added incorrectly.

You must file an appeal with the small claims court clerk within 30 days after the notice of the decision is mailed. You also must pay certain fees. Then the superior court’s appellate panel will hear your case. During the appeals process, both you and the plaintiff may be represented by lawyers.

A word of caution: If you lose an appeal in a higher court, you may be ordered to pay the judgment plus interest, costs involved and the plaintiff’s attorney’s fee up to \$150. You may even have to pay up to \$1,000 in attorney fees if the judge decides your appeal had no real basis and was not brought in good faith.

11. What if the judge decides against me, but I have a problem paying?

You can ask the judge if you can make installment payments. Otherwise, the sheriff can take your wages or other property in order to pay the money you owe. You cannot be sent to jail, though, for failing to pay a debt.

12. How do I collect my money?

The small claims court can't collect your money for you, but the clerk or small claims advisor can tell you some ways to do this yourself.

For example, you may be able to have the defendant's wages garnished. This means that the person's employer gives you part of the defendant's wages each payday until the debt is paid. To collect your money this way, you must find out where the person works; be sure to get the name of the company and its full address, including the county. Then, ask the small claims court clerk for a Writ of Execution and fill it out. When the court issues this writ, the sheriff or marshal will deliver it to the debtor's employer.

If you know where the defendant banks, the small claims clerk can issue a Writ of Execution that the sheriff or marshal takes to the bank. You need to know the name of the bank, the full branch address and the county. The bank will pay you what is owed if there is enough money in the account.

A Writ of Execution also can be used to attach or take certain kinds of personal property, such as stocks, bonds and the contents of a safe deposit box. After this property is collected, it can be sold in order to pay the money that you are owed.

Not all personal property can be taken. The defendant can file a Claim of Exemption to protect the "necessities of life," such as a house, furniture, clothes and some wages.

The cost of a Writ of Execution—as well as the amount that the sheriff or marshal charges to deliver the writ—can be added to the amount that the defendant owes you. You also are entitled to interest during the time it takes to collect.

If you do not have the information you need to collect your money, you can make the defendant come to court and answer your questions about his or her wages, bank account, personal property, real estate and employer's location. Contact the small claims advisor for information about how to schedule this hearing.

Remember: The judgment is good for 10 years, and you can renew it if you haven't collected the amount you're owed. But, in many cases, the longer you wait, the harder it is to collect the money.

13. Where can I find a lawyer to assist me?

If you want to talk to a lawyer and do not know one, you could ask a friend, a co-worker, your employer or a businessperson to recommend one.

Or, call a State Bar-certified lawyer referral service. Look in the Yellow Pages of your telephone directory under "Attorney Referral Service," or contact the local bar association. For an online list of certified lawyer referral services, visit the State Bar's Web site at www.calbar.ca.gov.

State Bar-certified lawyer referral services, which must meet minimum standards established by the California Supreme Court, can assist you in finding the right lawyer for your particular problem. Most of these services offer half-hour consultations for a modest fee.

Attorneys who are members of certified lawyer referral services must carry insurance, agree to fee arbitration for fee disputes, meet certain standards of experience and be State Bar members in good standing.

Lawyer referral service fees do vary. Don't forget to ask whether there is a fee for the referral or consultation. And if you decide to hire a lawyer for additional help, make sure you understand what you will be paying for, how much it will cost and when you will be expected to pay your bill. You can ask to have this information in writing.

What if you do not have enough money to pay for legal advice? You may belong to a legal insurance plan that covers the kind of services you need. Or, if you have very little income, you may qualify for free or low-cost legal help.

Check the white pages of your telephone directory for a legal services program in your county. (California's new statewide legal services Web site—www.LawHelpCalifornia.org—can help you locate a local program and provide you with additional resources as well.) Or contact a State Bar-certified lawyer referral service to find out if it offers free legal advice for low-income people or if it can direct you to a no-cost legal services organization.

For more information, refer to the State Bar pamphlet *How Can I Find and Hire the Right Lawyer?* To find out how to order a free copy of this pamphlet and other State Bar consumer pamphlets, call 415-538-2280 or send an e-mail to pamphlets@calbar.ca.gov. Or visit the bar's Web site—www.calbar.ca.gov—where you'll find the bar's consumer education pamphlets, as well as information on ordering them. The pamphlets also can be ordered in bulk.

The purpose of this pamphlet is to provide general information on the law, which is subject to change. If you have a specific legal problem, you may want to consult a lawyer.

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